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FILED
DISTRICT COURT OF GUAM

NOV 09 2007 *mba*

JEANNE G. QUINATA
Clerk of Court

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IN THE UNITED STATES DISTRICT COURT
TERRITORY OF GUAM

UNITED STATES OF AMERICA,

vs.

MI KYUNG BOSLEY, aka MI KYUNG,
PARK, and IN HYUK KIM, aka
DOMINIC,

Defendants.

CRIMINAL CASE NO. CR07-00064

**DEFENDANT IN HYUK KIM'S WRITTEN
REQUEST FOR DISCOVERY OF
MATERIALS AND INFORMATION
PURSUANT TO RULES 12(d)(2), 12.1(b),
16(a), AND 26.2 OF THE FEDERAL RULES
OF CRIMINAL PROCEDURE, 18 U.S.C.
§3500, *BRADY V. MARYLAND*, AND
THE RULES OF THE UNITED STATES
DISTRICT COURT FOR THE TERRITORY
OF GUAM; CERTIFICATE OF SERVICE**

**DEFENDANT IN HYUK KIM'S FIRST WRITTEN REQUEST FOR
DISCOVERY OF MATERIALS AND INFORMATION PURSUANT
TO RULES 12(d)(2), 12.1(b), 16(a), AND 26.2 OF THE FEDERAL RULES
OF CRIMINAL PROCEDURE, 18 U.S.C §3500, *BRADY V. MARYLAND*,
AND THE RULES OF THE UNITED STATES DISTRICT
COURT FOR THE TERRITORY OF GUAM**

TO: KARON V. JOHNSON, Assistant United States Attorney
Suite 500, Sirena Plaza, 108 Hernan Cortez Avenue
Hagatna, Guam 96910

COMES NOW, the Defendant(s) above named by and through his/her/their undersigned
counsel and hereby request(s) the Office of the United States Attorney (Territory of Guam) to
supply the undersigned counsel, and otherwise make available to him/her/them the materials and
information as hereinafter set forth as soon as practicable, but not to exceed a period of ten (10)
days from the date of this request:

1 1. Pursuant to Rule 12(d)(2) of the Federal Rules of Criminal Procedure, Defendant
2 requests the government to serve upon defendant's counsel notice of the government's intention to
3 use any evidence which defendant is entitled to discover pursuant to Rule 16 of the Federal Rules
4 of Criminal Procedure;

5 2. Pursuant to Rule 12.1(b) of the Federal Rules of Criminal Procedure, defendant
6 requests the government to serve upon defendant's counsel a written notice stating the names and
7 addresses of the witnesses upon whom the government intends to rely upon to establish
8 defendant's presence at the scene of the alleged offenses and any other witnesses to be relied upon
9 to rebut testimony of any of defendant's alibi witnesses, as well as the **names of all government**
10 **agents and law enforcement personnel involved in this case**;

11 3. Pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure defendant
12 requests the government **to allow his counsel to inspect, copy or photograph all discovery for**
13 **defendant and all co-defendants in the instant case**, including but not limited to the following
14 material and/or information:

15 (i) Any relevant written or recorded statement(s) made by Defendant, or copies thereof which
16 are within the possession, custody or control of the government. This request includes, but is not
17 limited to, the statement(s) made by defendant which are known or by due diligence may become
18 known to the government;

19 (ii) The portion of any written record containing the substance of any oral
20 statement(s) made by defendant, whether before or after defendant's arrest, in response to
21 interrogation by any person then known or unknown by defendant to be a government agent;

22 (iii) Any recorded testimony by defendant before a grand jury which relates to
23 the charged offense(s);
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1 (iv) The substance of any other oral statement(s) made by defendant, whether
2 before or after defendant's arrest, in response to interrogation by any person then known by
3 defendant to be a government agent if the government intends to use the oral statement(s) at trial;

4 (v) The substance of any written or recorded statement(s) made by the
5 defendant or any co-defendant, together with names and last known addresses of persons who
6 witnessed the making of such statement(s);

7 (vi) A copy of Defendant's prior criminal record that is within the government's
8 possession, custody or control. This request includes, but is not limited to defendant's prior
9 criminal record which is known or by due diligence may become known to the government;

10 (vii) Any books, papers, documents, photographs, tangible objects, buildings,
11 places, copies or portions thereof which are within the possession, custody or control of the
12 government, which are material to the preparation of defendant's defense, are intended for use by
13 the government at trial or were obtained from or belong to defendant;

14 (viii) Any results or reports of physical or mental examinations, and/or scientific
15 tests or experiments, or copies thereof, which are in the possession, custody, or control of the
16 government. This request includes, but is not limited to, tests or experiments which are known or
17 by due diligence may become known to the government. This request also includes, but is not
18 limited to, those tests or experiments which are material to the preparation of defendant's defense
19 or which are intended for use by the government at trial;

20 (ix) Any results or reports of any surveillance and electronic surveillance
21 (including wiretapping) or conversations(s) to which defendant was a party which are in the
22 possession, custody or control of the government. This request includes, but is not limited to,
23 electronic surveillance which is known or by due diligence may become known to the
24 government; and
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1 (x) The identity of any informant(s) involved in this matter including, but not
2 limited to, the name, current address and current telephone number of the informant(s). The
3 government is also requested to indicate whether the informant(s) will be called as a witness at
4 the trial. If the informant(s) are to be called as a witness at trial, the government is also requested
5 to produce the substance of any oral or written statement(s) made by the informant(s); and

7 (xi) Copies of any and all audiotapes, videotapes, photographs (including
8 digital photographs), etc. of defendant and any and all co-defendants in this case taken during the
9 government's investigation, which are in the possession, custody or control of the government.
10 This request includes, but is not limited to any videotapes, audiotapes, and photographs taken
11 during any and all surveillance conducted of defendant and any and all co-defendants in this case,
12 which is known or by due diligence may become known to the government;

14 4. Pursuant to Rule 26.2 of the Federal Rules of Criminal Procedure, defendant
15 requests the government to allow his counsel to inspect, copy, photograph any statement of any
16 witness that testifies on direct examination on behalf of the government. This request includes,
17 but is not limited to, any statement which is known or by due diligence may become known to the
18 government.

19 5. Pursuant to 18 U.S.C. §3500, defendant requests the government to allow his
20 counsel to inspect, copy or photograph any statement or report in the possession of the
21 government which was made by any government witness or any prospective government witness,
22 including any and all reports prepared by all government agents and law enforcement personnel
23 involved in this case. This request includes, but is not limited, to any statement and/or report
24 which is known or by due diligence may become known to the government;

26 6. Pursuant to Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, defendant
27 requests the government to disclose to his counsel all evidence favorable to defendant which is
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1 material either to guilt or punishment, and therefore allow defendant's counsel to pursue any
2 important, necessary, and/or independent investigations as well as to formulate defenses and trial
3 strategies. This request includes, but is not limited to the following:

- 4 (i) Any witness' prior criminal record;
- 5 (ii) Any witness' statement(s) which are favorable to defendant;
- 6 (iii) The existence of witnesses favorable to defendant;
- 7 (iv) Psychiatric reports showing defendant's legal insanity;
- 8 (v) Specific evidence which detracts from the credibility or probative value of
9 testimony or evidence used by the government;
- 10 (vi) Promises of immunity to any government witness;
- 11 (vii) Prior contrary statements of any government witness;
- 12 (viii) Any classified documents in the possession, custody or control of the
13 government which are relevant to defendant's defense; and
- 14 (ix) Any other evidence which would tend to exculpate defendant.

15 This request also includes, but is not limited to, any of the above referenced
16 information which is known or by due diligence may become known to the government.

17 7. Pursuant to Rule 16 of the Federal Rules of Criminal Procedure, defendant
18 requests the government to allow his counsel to inspect, copy, or photograph the following
19 information:
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- 21 (i) Photographs used in any photographic lineup, show-up, photo spread or any
22 other identification proceeding or if no such photographs can be produced, the government shall
23 notify defendant's counsel whether any such identification proceeding has taken place and the
24 results of the identification proceeding;

1 (ii) Any search warrants supporting affidavits which resulted in the seizure of
2 evidence which is intended for use by the government as evidence or which was obtained from or
3 belongs to defendant;

4 (iii) Whether defendant was the subject of any electronic eavesdrop, wiretap, or
5 any other interception of wire or oral interception as defined by 18 U.S.C. §2510, et seq., in the
6 course of the investigation of the case;

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8 This request also includes, but is not limited to, any of the above requested
9 information which is known or by due diligence may become known to the government;

10 8. Pursuant to Brady v. Maryland, 373 U.S. 83, 87, (1963); United States v. Howard,
11 894 F.2d 1085 (9th Cir. 1990); and United States v. Amperosa, 728 F.2d 1479 (D. Haw. 1990),
12 defendant also requests that the government provide and/or disclose to defendant's counsel the
13 sentencing guideline information and point tabulation which the government contends applies to
14 defendant which should include, but is not limited to the following:

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16 (i) The offense guideline or guidelines which the government represents is
17 applicable to the charge against defendant;

18 (ii) The base level the government represents is applicable to the charges
19 against defendant, including a showing of the method by which the government represents the
20 charges should or should not be grouped;

21 (iii) Any aggravating specific offense characteristics the government intends to
22 seek as applicable to the charges against defendant;

23 (iv) Any adjustments regarding the victim, role, obstruction, or acceptance of
24 responsibility which the government believes are applicable to the case;

25 (v) Whether the government intends to take the position that the career
26 offender or criminal livelihood provisions apply to defendant in this case;
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1 (vi) The ground, if any, upon which the government will argue for an upward
2 departure form the applicable guideline range, including but not limited to any argument
3 regarding the adequacy of the criminal history category; and,

4 (vii) The existence of any facts, information or other evidence that could give
5 rise to an argument for a downward departure form the applicable guideline range;
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7 9. Defendant also requests that the government provide and/or otherwise disclose to
8 his counsel any and all material or information which tends to negate defendant's guilt as to the
9 offense charged or would tend to reduce his punishment therefore.

10 If, prior to or during trial, the government discovers additional evidence or material
11 previously requested herein, the government shall promptly notify defendant's counsel of the
12 existence of the additional evidence or material.
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14 DATED: Hagatna, Guam, November 9, , 2007.

15 **LUJAN AGUIGUI & PEREZ LLP**


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17 By:


DAVID J. LUJAN, ESQ.

Attorney for Defendant In/Hyuk Kim

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TO:	KARON V. JOHNSON Assistant U.S. Attorney Suite 500, Sirena Plaza 108 Hernan Cortez Avenue Hagatna, Guam 96910	<u>MAILED</u> ()	<u>DELIVERED</u> (x)
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DAVID J. LUJAN, ESQ.
Attorney for Defendant In Hyuk Kim